

## REMARKS

### Informalities.

Allowable Subject Matter. Claims 5-9, 12-14, 21-25, 28-30, 36-40 and 43-45 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. In light of the amendments and remarks made with respect to the independent base claims from which the above claims depend, Applicant respectfully submits that the above-referenced dependent claims are allowable without amendment, as each adds further limitations to otherwise allowable subject matter. Applicant thus respectfully requests withdrawal of the objections to claims 5-9, 12-14, 21-25, 28-30, 36-40 and 43-45.

### Claim Rejections under 35 U.S.C. § 103.

An invention is unpatentable under 35 U.S.C. § 103(a) ("Section 103") "if the differences between the subject matter sought to be patented over the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains."

To establish a *prima facie* case of obviousness, three criteria must be met. "First, there must be some suggestion or motivation . . . to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." MPEP § 2142.

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." *In re John R. Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992). Any such suggestion must be "found in the prior

art, and not based on applicant's disclosure." *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991). Indeed, "[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." MPEP § 2142.

A "clear and particular" showing of the suggestion to combine is required to support an obviousness rejection under Section 103. *Id.* For the reasons set forth below, Applicant submits that the prior art fails both to teach or suggest all the claim limitations, and to clearly and particularly suggest the combination indicated by the Examiner; thus, Applicant's claims are not obvious in view of the prior art references.

Claims 1-4, 10-11, 15-20, 26-27, 31-35 and 41-42 stand rejected under Section 103 as unpatentable over U.S. Pat. No. 6,256,737 to Bianco ("Bianco") in view of U.S. Pat. No. 5,892,824 to Beatson ("Beatson").

Applicant respectfully submits that the above-referenced art, considered cumulatively, does not render the present invention obvious for the reasons set forth below.

Specifically, Applicant's independent claims 1, 16 and 31 recite a method and device for calibrating changes in a user's biometric features over time, wherein one step comprises "weighting [an] authenticating biometric value." The specification defines "weight" as a value assigned to each biometric feature which indicates "the ability or strength of the measured feature to act as a unique authenticator of a person." See Specification, p. 15, ln. 3-4. Applicant finds no mention of this element in any cited reference, nor any equivalent thereof.

Bianco discloses a system that utilizes biometric measurements for the authentication of users to enterprise resources. Bianco teaches that a user may be authenticated where the biometric value

obtained meets or exceeds a previously entered threshold value for the biometric feature, wherein the threshold value “indicates the level of identification the biometric device must determine for the user to pass the device.” See col. 24, ln. 15-17. Bianco also teaches summation and/or multiplication of more than one biometric value and comparison of the resulting value to a total threshold score in order to more reliably determine authentication (see col. 36, ln. 9-23).

The Bianco summation/multiplication process is not analogous to the weighting process disclosed by the present application. Indeed, the Bianco process does not involve multiplying a biometric value by a pre-determined value that indicates the degree of reliance one should place on the accuracy of that biometric feature in identifying an individual. Rather, the Bianco process simply sums or multiplies multiple variable biometric values obtained from the user himself and compares that sum or product to a total threshold value. Although such process ensures greater precision of authentication due to the greater number of biometric features taken into account, the Bianco process, unlike the present invention, fails to consider inherent characteristics of such biometric features that may influence their reliability. Bianco thus fails to disclose or suggest the weighting process claimed by the present application.

Further, although Bianco notes that “the best biometric measurements to use for authentication purposes depend on the consistency over time of the biometric measured,” (see col. 8, ln. 2-5), Bianco fails to teach or suggest any method whatsoever by which the biometric authenticating device may be calibrated to account for variances in biometric measurements. Indeed, the integration process disclosed by Bianco does not adjust or calibrate the total threshold value by “integrating the weighted authenticating biometric value into an authenticating template,” as disclosed by the present application. Rather, the Bianco integration process merely integrates the

product or sum from the above-described summation process as the replacement value for the single biometric value originally calculated. In this way Bianco ensures that the value being compared to the total threshold value is the combined biometric value for all measured biometric features. Bianco, however, does not allow for that total threshold value to change in response to the receipt of such actual values, as disclosed by the present application.

Beaston, on the other hand, is directed solely to a signature authentication device for signature capture and verification. Although Beaston integrates a calibration mechanism for calibration over time, Beaston also fails to disclose or suggest weighting the obtained biometric value according to a pre-determined degree of reliability assigned to it. Indeed, weighting is an inherently relative concept as the degree of reliability to be placed on one biometric value is only meaningful when compared to the degree of reliability afforded a different biometric feature. Beaston thus teaches away from such weighting as Beaston measures and verifies only one biometric trait.

In addition, it would not have been obvious to one skilled in the art to implement the calibrating feature of Beatson into the biometric authentication device of Bianco as Beatson is properly considered non-analogous art. Beatson is solely directed to authenticating signatures and excludes from consideration any broader application, including authentication of internal biometric features. One skilled in the art would thus not look to Beatson when contemplating a device capable of authenticating internal biometric measurements or a device capable of reading more than one biometric value. Further, as discussed above, even if Bianco and Beatson were combined as the Examiner suggests, the resulting combination would fail to produce Applicant's invention.

Applicant respectfully submits that the inability of the combined references to produce Applicant's invention and the lack of any suggestion or motivation to modify such art to produce Applicant's invention renders the present invention non-obvious in view of such references.

The remaining claims are not rendered obvious by the cited references as each adds further limitations to otherwise allowable subject matter. Applicant thus respectfully requests withdrawal of the rejections of claims 1-4, 10-11, 15-20, 26-27, 31-35 and 41-42 under Section 103.

Conclusion

Based on the foregoing, Applicant believes that the claims of the present invention are in condition for allowance and respectfully requests the same.

Should the Examiner have any questions, comments, or suggestions in furtherance of the prosecution of this application, the Examiner is invited to initiate a telephone interview with undersigned counsel.

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Respectfully submitted,



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